IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

No. 497.

COUNTY OF ST. CLAIR,
Plaintiff in Error,

vs.

INTERSTATE SAND AND CAR TRANSFER COMPANY,
Defendant in Error.

STATEMENT OF CASE.

I.

PLEADINGS.

This is a civil action by which the County of St. Clair of the State of Illinois, seeks to recover from defendant, a corporation of the State of Missouri, two hundred and forty thousand dollars ($240,000.00) as penalties, because, as plaintiff alleges, defendant has established and is maintaining a ferry for the conveyance of property for profit and hire across the Mississippi River between the County

of St. Clair and the City of St. Louis, Missouri, without a license from the Board of County Commissioners of said county, as the statutes of Illinois require.

The declaration is set forth at length in the printed transcript, and these facts appear from it, namely:

1st. That the business carried on by defendant and complained of by plaintiff is interstate commerce, conducted on the Mississippi River, a navigable water of the United States, between the County of St. Clair, Illinois, and the City of St. Louis, Missouri.

2nd. That said ferry business is conducted solely for the purpose of transferring railroad cars, loaded and unloaded, and not for the general conveyance of persons and animals, nor other property, except when shipped in railroad cars.

3rd. That for the purpose of carrying on its ferry business, defendant has constructed within the limits of said county, and there subject to taxation, certain inclines or permanent cradles and roadways as aids in landing, and receiving on defendant's boats, railway cars.

To this declaration, the Court sustained a demurrer of the defendant in error, on the ground that the declaration did not state facts sufficient to constitute a cause of action.

It is to be observed that the petition does not state that the Board of County Commissioners of St. Clair County had offered to grant defendant a ferry license, nor that they could or would have done so had defendant applied for such license.

Since it appears from the declaration that defendant's business is that of conducting a ferry across the Mississippi River between the states of Illinois and Missouri, the correctness of plaintiff's contention that this business cannot be conducted except upon the procuring of a license from the State of Illinois, and the observance of the requirements imposed by the statutes of that State on ferry

companies, depends upon the affirmative of one or the other of the following three propositions, namely:

1st. That interstate commerce conducted by means of ferries across the Mississippi River between Illinois and Missouri, is not within the controlling power of Congress, or

2nd. That the ferry laws of Illinois which defendant, failed to comply with, do not constitute a regulation of interstate commerce when applied to such ferries, and that because of such failure defendant is liable for the penalties imposed by such laws, or

3rd. That although defendant's business is interstate commerce and although the ferry laws of Illinois are regulative of it, yet that State has a right to control defendant in the conduct of such commerce because in connection therewith defendant uses certain property located in St. Clair County Illinois, and there subject to taxation.

II.

FERRY LAWS OF ILLINOIS.

The ferry laws of the State of Illinois, which defendant failed to comply with, are found in Chapter LV of its Revised Statutes, and are set forth in full as an appendix to this brief. They may be summarized as follows:

They do not simply seek to prescribe such reasonable rules and regulations touching the management of ferries as may be necessary for the safety of those crossing them, but they forbid anyone to operate a ferry, even in interstate commerce, without the consent of the Board of County Commissioners of the State of Illinois, wherein such ferry may have a landing, and the payment of a license fee for the privilege of conducting such ferry. (Sec. 1.). And the Board may discriminate between ferries already established and those which might hereafter be established. (Sec. 1.) They impose no obligation on the Board of

County Commissioners to grant a license, though the applicant therefor might be willing and able to comply with every requirement of the law; and indeed, the law prohibits the granting of a license if there is another ferry within a mile of the proposed ferry that can do the business the latter proposes to engage in, unless the County Board believes the second ferry necessary. (Sec. 2.)

They require notice of the application for a ferry license to be published for four weeks. (Sec. 4.) And they discriminate in favor of the owner of land adjoining or embracing the water over which the ferry is to be operated. (Sec. 5.) And the Board may discriminate between land owners. (Sec. 6.) They also require that before the applicant shall be given a license, he shall give a bond to the people of the State of Illinois, with sureties to be approved by the County Clerk in such amount as the Board may order, conditioned for the faithful discharge of his duties as ferryman according to law, thus enabling the Board not only to exact a bond, but also to discriminate between ferrymen as to the amount of bond required. (Sec. 7.) The license so obtained shall not exceed ten years, but may be renewed upon giving a new bond and paying such license fees as the Board may require. (Sec. 8.) The Board may charge one ferryman $5.00 a year and another $300.00 for a like period, but in no case is the license fee to be in lieu of taxes upon the property or franchises of the ferry. (Sec. 9.) These laws furthermore fix the rate of ferriage (Sec. 10.); impose penalties for illegal ferry charges (Sec. 11); require every ferryman to keep a list of legal rates of ferriage posted in a public place at the ferry (Sec. 12), and fines him $10.00 for every day that he fails to post such list (Sec. 13); require a ferryman to provide proper wharves and other convenience for the embarking or landing of passengers, teams, horses, cattle and other property without unnecessary delay (Sec. 14); regulate the number of boats and require the ferryman

to keep as many boats and as many competent men as shall be necessary to operate the ferry for the proper accommodation of the public. (Sec. 15.) They also impose a forfeiture of $10.00 per day on ferrymen for each day that they shall fail to keep the proper number of boats or proper and safe wharves, as provided in the two preceding sections; and if such neglect shall continue for a period of three weeks, or if the ferry shall be abandoned, disused, or unfrequented for the space of six weeks, the Board may require the ferryman to show cause why his license should not be revoked, and revoke it if cause therefor is proved to the satisfaction of the Board. (Sec. 16.)

These laws also require the ferryman to afford safe and speedy passage to all persons and their teams and property, from daylight until dark, and during such further time as may be required by the Board, and the ferryman shall, at any hour of the night when required, give passage to any person or property on payment of tender of double the rate of ferriage allowed during the day, and the only excuse recognized for a failure to give such passage, is that it shall be manifestly hazardous to attempt a ferriage by reason of flood, storm, or ice. (Sec. 17.)

These laws furthermore direct that all persons shall be ferried in the order in which they shall arrive at the ferry, subject to preference which is given to public officers and others. (Sec. 18.) If the keeper of a ferry shall fail to perform any of his duties under Sections 17 and 18, he shall for each offense forfeit to the person aggrieved the sum of $3.00, and shall be liable for all damages occasioned thereby. (Sec. 19.)

All ferries established over the Ohio and other rivers and lakes upon the borders of Illinois, before the adoption of the laws in question, and which have been maintained since their establishment, are declared to be established ferries within the meaning of the law, and entitled to its benefits. (Sec. 20.)

Section 21 provides that whoever shall maintain a ferry without a license or authority of law, within three miles of any ferry which was then or might thereafter be established pursuant to the Act; should forfeit the boat or craft operated without a license to the owners of the authorized ferry, and should also forfeit to the owners of such ferry $15.00 for each person who might be ferried by the unlawful ferry.

Section 22 allows the penalties provided for by the ferry laws in question to be recovered by an action of debt before any justice of the peace in the county where the offense is committed. The last section of the laws (Sec. 23) provides for the right of eminent domain in obtaining a ferry license.

It thus appears that under the ferriage laws of Illinois, which defendant is alleged to have disregarded, the defendant could not conduct the business of ferrying cars, in which it is solely engaged, without at the same time undertaking to carry persons, animals and ordinary vehicles, and giving bond to carry them, at rates to be fixed by the County Boards, and at any time during the 24 hours of the day. The many other burdensome regulations of these laws, to say nothing of discriminations which a Board is permitted to make, are apparent from the most casual reading of them.

III.

CONGRESSIONAL LAWS CONCERNING FERRIES.

There is a large body of statutory law relating to ferries, by name (and to boats navigating the waters of the United States which include ferries), to be found in the enactments of Congress. Most of them are found in the Revised Statutes of 1878. That is, in:

Title XXXIV. Concerning the collection of duties.

Title XLVIII. Concerning commerce and navigation.

Title L. Concerning regulation of vessels and domestic commerce.

Title LII. Concerning regulation of steam vessels.

It is unnecessary to set forth the numerous provisions of these titles, but it may be helpful to outline the scope of some of them. For instance:

Sec. 2792. Provides that **ferry boats** need not enter and clear, nor pay entrance or clearance fees, etc.

Sec. 4233. Rule 26 prescribes lights for boats navigating the water flowing into the Gulf of Mexico. Rule 7 prescribes lights for boats **other than ferries** navigating the waters of the United States not included in Rule 6.

Sec. 4335. Provides that any change in the master of any licensed vessel **(ferry boats excepted)** shall be reported to the Collector at the port where the change is made.

Sec. 4350. Vessels navigating the Mississippi River and tributaries above New Orleans, exempted from certain requirements of the Revised Statutes.

Sec. 4386. Provides that railroads and boats conveying animals from one State to another, shall not keep them confined over 28 hours.

Sec. 4399. "Every vessel propelled in whole or part by steam, shall be deemed a steam vessel within the meaning of this title." (Title LII—regulation of steam vessels.)

Sec. 4400. "All steam vessels **navigating any waters of the United States,** which are prominent highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this this title." (Title LII.)

Sec. 4420. Steam vessels used exclusively for towing and carrying freight on the Mississippi River and its tributaries, allowed to carry a certain amount of steam.

Sec. 4426. Hulls and boilers of **ferry boats** to be inspected

and to comply with other regulations and not to be navigated without a licensed engineer and pilot.

Sec. 4427. Tug boats and towing boats and freight boats also to be inspected as to boilers, macinery and appurtenances, their officers to be licensed and subject to the same provisions as officers of passenger steamers.

Sec. 4458. Owners of steamers to pay fees for inspection before license is issued.

Sec. 4464. Certificate of Inspection of all steamers carrying passengers except ferry boats, to state the number of passengers they may carry.

Sec. 4467. Masters of passenger steamers to keep a list of all passengers, place received and where landed, etc.; but on routes not exceeding 100 miles, it is only necessary to keep the number of passengers.

Sec. 4470. Steamers carrying passengers or freight to take certain precautions against fire.

Secs. 4477–9. Steamers carrying passengers to have watchman and fire-extinguishers.

Sec. 4480. Also to have wire tiller-ropes, etc.

Sec. 4481. Every steam vessel navigating rivers only, except ferry boats, freight boats, canal boats and towing boats of less than fifty tons, shall have row boats, etc.

Sec. 4483. River steamers to have fire-buckets, etc.

Sec. 4487. River steamers to be anchored when navigation deemed unsafe.

Sec. 4492. Barges carrying passengers, while in tow of a steamer, shall be subject to the provisions as to fire buckets, etc.

Sec. 4499–4500. Penalties prescribed for navigating vessels without complying with the provisions of this title. (Title LII.)

Further statutory provisions of Congress touching boats navigating the Mississippi River and its tributaries are to be found in the Supplement of the Revised Statutes of the United States, 1874–1891.

Page 112, Chapter CLXXXV, exempts vessels navigating the Mississippi River and tributaries above New Orleans from certain requirements of the statutes.

Page 271, Chapter LIV.—Vessels propelled by sail or internal power, and not carrying passengers, whether navigating internal waters of the State or navigable waters of the United States, and not engaged in trade with contiguous foreign territory, not required to pay enrolling or license fees. Nor shall flatboats, barges or light crafts for the carriage of freight be required to be enrolled, registered or licensed if navigating the rivers or lakes of the United States, unless propelled by sail or its own internal motive power.

IV.

THE CONSTITUTION AND INTERSTATE COMMERCE ACT.

The Interstate Commerce Act, Section 1, provides in part as follows:

"That the provisions of this Act shall apply to any common carrier, or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment from one State or Territory of the United States, or District of Columbia, to any other State or Territory of the United States, or the District of Columbia, etc. * * * The term 'Railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term 'Transportation' shall include all instrumentalities of shipment or carriage."

One of the subdivisions of Section 8, of Article I, of the Constitution of the United States, provides that Congress shall have power:

"To regulate the commerce with foreign nations and among the several States and with the Indian tribes;" and Section 10 of this Article provides, amongst other things, that "no State shall, without the consent of Congress, lay any duty or tonnage."

Thus not only has the Constitution of the United States confided to its Congress the power to regulate commerce between the States, but that body has recognized ferries as instruments of such commerce and taken to itself jurisdiction over them, and thus indicated its intention that they are not to be trammeled by State legislation.

V.

JOINDER IN ERROR.

The defendant in error for its joinder in the errors assigned by plaintiff in error says:

First: That the Circuit Court did not err in sustaining the demurrer to the declaration.

Second: That the Circuit Court did not err in rendering judgment for costs against the plaintiff below.

VI.

BRIEF.

1. The ferry business carried on by defendant is interstate commerce conducted on the Mississippi River, a navigable water of the United States; and the State of Illinois can not require defendant to obtain a license from the Board of Commissioners of St. Clair County to conduct such commerce.

Gibbons v. Ogden, 9 Wheat. 1;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196;
Covington, Etc., Bridge Co. v. Kentucky, 154 U. S. 204 (217);
Harman v. Chicago, 147 U. S. 396;
Brown v. Houston, 114 U. S. 622;
Moran v. New Orleans, 112 U. S. 69.
Mobile v. Kimball, 102 U. S. 691;
Hall v. DeCuir, 95 U. S. 485;
Rhodes v. Iowa, 170 U. S. 412;
Wabash, Etc., Railway Co. v. Illinois, 118 U. S. 557 (564);
Pickard v. Pullman, Etc., Car Co., 117 U. S. 34;
Hays v. Pacific Mail S. S. Co., 17 How. 596;
Welton v. Missouri, 91 U. S. 282;
In re Debs, 158 U. S. 564;
Addyston Pipe Steel Co. v. United States, 175 U. S. 211;
Adams Express Co. v. Ohio, 166 U. S. 185;
Philadelphia, Etc., v. Pennsylvania, 122 U. S. 326;
Bowman v. C. & N. W. Ry. Co., 125 U. S. 465 (508);
Leloup v. Mobile, 127 U. S. 640;
St. Louis v. W. U. Tel. Co., 148 U. S. 92;
California v. Pacific R. R. Co., 127 U. S. 1;
Crutcher v. Kentucky, 141 U. S. 47;
Brennan v. Titusville, 153 U. S. 289 (302);

Fargo v. Michigan, 121 U. S. 230 (245);
Hooper v. California, 155 U. S. 648 (653);
Pickard v. Pullman Co., 117 U. S. 34.
Norfolk, Etc., v. Ry. Co. v. Pennsylvania, 136 U. S. 114;
Illinois Central R. R. Co. v. Illinois, 163 U. S. 142;
Robbins v. Shelby Co., 120 U. S. 489;
St. Louis v. Consolidated Coal Co., 158 Mo. 342.

2. Even if the State of Illinois had power to exact a license fee from all persons engaged in carrying on interstate commerce by means of ferries, the discriminations of the Act in question in favor of existing ferries and land owners, and the authority given the Boards of County Commissioners to discriminate between applicants for a license, makes the Act void so far as it relates to interstate commerce.

Guy v. Baltimore, 100 U. S. 434.

VII.

ARGUMENT.

1. The ferry business carried on by defendant is interstate commerce, conducted on the Mississippi River, a navigable water of the United States, and the State of Illinois cannot require defendant to obtain a license from the Board of Commissioners of St. Clair County to conduct such commerce.

The case of the Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196, seems to be entirely decisive of the case at bar, and no other authority should be necessary to induce the Court to sustain the demurrer to the declaration herein. The Gloucester Ferry Company was a New Jersey corporation conducting a ferry from the Town of Gloucester in that State to the City of Philadelphia, with a capital stock of $50,000. Its entire business consisted in ferrying passengers and freight across the river between those places. Its only property in Pennsylvania consisted of the lease of the dock at which it landed in Philadelphia. Its boats were registered at the port of Camden, N. J. The State of Pennsylvania instituted an action to recover from the company a tax on its capital stock on the ground that it was a corporation doing business in the State of Pennsylvania, the statutes of that State providing that every company or association, whether incorporated by Pennsylvania or any other State, and doing business in the State of Pennsylvania, or having capital employed therein, should pay certain taxes on its capital stock. The action was originally brought in the courts of Pennsylvania, and reached this Court on writ of error sued out by defendant company. In that case this Court held:

Gloucester Ferry Company, 114 U. S. 196.

1. "Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of

public waters for that purpose, as well as the purchase, sale and exchange of commodities.

2. The power to regulate commerce, interstate and foreign, vested in Congress, is the power to prescribe rules by which it shall be governed; that is, the conditions upon which it shall be conducted; determine when it shall be free, and when subject to duties or other exactions.

3. As to those subjects of commerce which are local or limited in their nature or sphere of operation, the State may prescribe regulations until Congress assumes control of them.

4. As to such as are national in their character and requiring uniformity of regulation, the power of Congress is exclusive; and until Congress acts, such commerce is entitled to be free from State exactions and burdens.

5. Commerce with foreign nations, and between the States, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation.

6. The business of receiving and landing of passengers and freight is incident to their transportation, and a tax upon such receiving and landing is a tax upon transportation and upon commerce, interstate or foreign, involved in such transportation.

7. The only interference by a State with the landing and receiving of passengers or freight arriving by vessels from another State or from a foreign country, which is permissible, is confined to a measure to prevent confusion among the vessels and collision between them, to insure their safety and convenience, and to facilitate the discharge or receipt of their passengers and freight.

8. Interstate commerce by a corporation is entitled to the same protection against State exactions which is given to such commerce when carried on by individuals.

9. The transportation of passengers and freight for hire by a steam ferry across the Delaware River from New Jersey to Phila-

delphia, by a corporation of New Jersey, is interstate commerce, which is not subject to exactions by the State of Pennsylvania.

10. Freedom of transportation between the States or between the United States and foreign countries implies exemption from charges other than such as are imposed by way of compensation for the use of property employed, or for facilities afforded for its use, or as an ordinary tax upon the value of the property."

Plaintiff's entire case practically rests on a declaration in Gibbons v. Ogden, 9 Wheat. 1, that laws respecting ferries and quarantine laws, were matters not surrendered to the general government. Therefore it would be well at this point to determine what meaning this Court has given to this language of Mr. Chief Justice Marshall and what he must have meant by it so far as it referred to ferries.

In the Gloucester Ferry Case at page 215 Mr. Justice Field, who wrote the opinion of the Court, which was unanimous says: "In Gibbons v. Ogden (9 Wheat. 1), Chief Justice Marshall said that laws respecting ferries, as well as inspection laws, quarantine health laws, and laws regulating the internal commerce of the States are component parts of an immense mass of legislation embracing everything within the limits of the State not surrendered to the general government; but in this language he plainly refers to ferries entirely within the State, and not to ferries transporting passengers and freight between the States and a foreign country; for the power vested in Congress comprehends every species of commercial intercourse between the United States and foreign countries. No sort of trade can be carried on between this country and another to which the power does not extend, and what is true of foreign commerce is also true of commerce between States over the waters separating them. Ferries between one of the States and a foreign country can not be deemed therefore beyond the control of Congress under the commercial power. They are necessar-

Gibbons Case, 9 Wheat. 1.

ily governed by its legislation on the importation and exportation of merchandise and the immigration of foreigners; that is, are subject to its legislation in that respect; and if they are not beyond the control of the commercial power of Congress, neither are ferries over waters separating States. Congress has passed various laws respecting such international and interstate ferries, the validity of which is not open to question." The Court then goes on to refer to some of the statutory provisions which we have already set forth in this brief.

At page 217 the Court further says in referring to an interstate ferry: **"That such a ferry is a means and necessary means of commercial intercourse between the States bordering on their dividing lines, and it must therefore be conducted without the imposition by the States of taxes or other burdens upon the commerce between them."**

The Court recognizes the right of the State or a municipality thereof, to impose a wharfage due, or fee, for the use by boat of any property which the State or municipality may furnish; and no one disputes the right of a State or city to make a charge for the use of such facilities. But, of course, there is no pretense that the ferry laws of Illinois, under which this action is brought, imposes a wharfage tax. The law in question expressly imposes a license fee or privilege tax for the right of ferrying, as far as defendant company is concerned, over the Mississippi River, and declares (Sec. 9) that "such license fee shall not be in lieu of taxes upon the property or franchise of such ferry, but the same shall be subject to be assessed and taxed as other property and franchises."

That Mr. Justice Field was right in saying that Mr. Chief Justice Marshall plainly referred to "ferries entirely within the State" when he said in Gibbons v. Ogden, that laws respecting ferries was a part of an immense mass of legislation not surrendered to the general government is apparent for the entirely sufficient reason that, **Gibbons v. Ogden was a case involving an interstate ferry,** and it would be

convicting the Chief Justice, and the entire court, of the most astounding and inexplicable inconsistency to say that he referred in the language quoted to interstate ferries, when he was deciding that Gibbons in running ferry boats between New York and New Jersey was engaged in interstate commerce, and that with respect to that New York had no control.

Ogden complained that Gibbons was running two boats between New York City and Elizabethtown, New Jersey, in violation of his exclusive privileges. That Gibbons was running a ferry clearly appears from the statement of the case and the argument of Mr. Oakley, one of Ogden's counsel, when he contends that although "commerce" might include the carriage of goods between States it did not include the carriage of passengers. He said (page 76): "It appears by the pleadings that his (Gibbons'), boat was employed in transportation of persons or passengers for hire and it is notorious that this is a distinct business." He then (p. 77) concedes that the States could not tax property carried across them and contends (p. 78) that while the exclusive franchise claimed by Ogden might be void so far as a restraint on navigation between State and State for carriage of property or persons it was valid so far as it concerned the navigation of the waters of New York.

Mr. Emmett, also of counsel for Ogden, admitted (p. 126) that under the ordinance of 1787 and the Acts creating the States of Louisiana, Mississippi and Missouri the free navigation of the Mississippi and its tributaries had been secured to the citizens of the United States and put beyond the power of any State to regulate. In short, we see that not only was Gibbons v. Ogden, a case involving an interstate ferry, but that the counsel, who were asserting the validity of the New York Act, there in question, admitted enough to put respondent in the case at bar out of court, and we therefore repeat that Mr. Justice Marshall clearly referred to ferries entirely within the

confines of a State when he said that the States might regulate ferries, because the case before him concerned an interstate ferry, and the Court held that the power to regulate commerce given Congress comprehended navigation (p. 189) and included every species of commercial intercourse between the States (193); and that if Congress has such power it must exercise it wherever the subject exists (195), and that the power to regulate is general and has no limitations but such as are prescribed in the power itself (196); that such power comprehends navigation within the limits of every State in the Union, so far as that navigation may in any manner be connected with commerce between the States, or foreign nations, or Indian tribes (197), and that the power to regulate commerce among the States is exclusively in Congress, and that no part of it can be exercised by a State (198); that it is immaterial whether the States surrendered the power over interstate commerce by the mere grant to Congress, or retained it until Congress should act, because Congress has acted, and that the sole question is, can a State regulate interstate commerce while Congress is regulating it (200); that Congress cannot give a right to a State by virtue of its own powers (202); and that while Congress may adopt a State's provisions it cannot enable a State to legislate on a subject (207); that regulation "produces a uniform whole which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated," and therefore what Congress may regulate must be left untouched, except with its express permission (209); that the grant to Fulton is in conflict with the navigation laws of the United States, regulating the coasting trade made in pursuance of the Constitution, and the State law must therefore yield even though passed under powers acknowledged to remain in the States (210); that the power to regulate commerce given Congress extends to navigation carried on by vessels exclusively engaged in the carriage

of passengers as well as those carrying merchandise (215); and that if the power to regulate interstate commerce extends to any vessel it includes all engaged in such commerce (217) and extends to steamboats as well as sailing vessels (219); that all question on this point had been put to rest because Congress had passed an Act for enrolling and licensing steamboats (220).

Mr. Justice Johnson in his concurring opinion, which is hardly second to that of the Chief Justice in its grasp of the necessity for and meaning of the interstate clause of the Constitution, refers to the history of the times with respect to commercial regulations (224) and says that, upon the adoption of the Constitution the numerous State regulations concerning foreign and interstate commerce by common consent became dead letters for want of the sustaining power which had been delegated to Congress (226); that the grant to Fulton interfered with the freedom of intercourse between the States, because the vehicles of commerce are within the power of Congress as well as commerce itself (229) and that the dominating object in the adoption of the Constitution was to keep commercial intercourse amongst the States free from all invidious and partial restraints (231) and that licensing acts are universally restraining acts (232); that whether the boats of Gibbons were steamboats or ferryboats was immaterial, because both are recognized by Acts of Congress on navigation, and as an example of the recognition by Congress of ferryboats as within its control quotes from Sec. 12 of the Act of 1793 these words: "That when the master of any ship or vessel, ferry boats excepted, shall be changed," etc. (234). This section is now Sec. 4335 R. S. 1878, and provides that such change shall be reported to the collector of the port residing where such change is made.

In our statement we have given many other references to Acts of Congress relating to ferries by name or including them as boats navigating the rivers of the

United States, so if Mr. Justice Johnson found in the single Act cited by him evidence that Congress had undertaken to control interstate ferries how conclusive on this point are the Acts of Congress as they now stand.

But if interstate ferriage is interstate commerce and a subject of national importance, as this Court has certainly held it to be in the Gloucester Ferry case, and in Gibbons v. Ogden, it is not necessary to the preservation of congressional control over such commerce that Congress should have legislated at all on the subject. Its silence is a declaration that it means it to be left untrammeled. This Court has frequently and positively so declared, as we will show presently. Indeed this Court has held that Congress could not surrender to the States its right of control in such a case.

Covington Bridge Case, 154 U. S. 204.

In Covington, Etc., Bridge Co. v. Kentucky, 154 U. S. 204, the Court had to consider the validity of an act of the State of Kentucky, which undertook to fix the charges to be made by the Bridge Company for traffic across its bridge between Cincinnati and Covington. The Court held:

1. **"That traffic across the river was interstate commerce.**
2. **That the bridge was an instrument of such commerce.**
3. **That the statute was an attempted regulation of such commerce which the State had no constitutional power to make.**
4. **That Congress alone possesses requisite power to enact a uniform scale of prices in such a case, the authority of the State being limited to fixing tolls on such channels of commerce as are exclusively within its territory."**

On page 217 the Court says: "This case involves the right of one State to fix charges for the transportation of persons and property over a bridge connecting it with another State without the assent of Congress or such other State, and this involves the further inquiry: 1st. Whether such traffic across the river is interstate com-

merce; and, second, whether a bridge can be considered an instrument of such commerce. The first question must be answered in the affirmative upon the authority of Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196, in which the State of Pennsylvania attempted to tax the capital stock of the corporation whose entire business consisted in ferrying passengers and freight over the river Delaware between Philadelphia, in Pennsylvania, and Gloucester, in New Jersey. This traffic was held to be interstate commerce, and inasmuch as it appeared that the ferryboats were registered in New Jersey and were taxable there, it was held that there was no property held by the company which could be subject to taxation in Pennsylvania, except the lease of a wharf in that State. * * * **With reference to the second question, an attempt is made to distinguish a bridge from a ferryboat and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that the one is movable and the other is a fixture, makes no difference in the application of the rule.**"

Plaintiff's counsel contends that the Covington Bridge Case has no relevancy to the case at bar because the latter does not involve the fixing of ferry rates. But the Court will remember that the ferry laws of Illinois and which defendant must have given bond to comply with before it could have obtained a license from the County Board of St. Clair County, gives such boards the rights to fix ferry charges. Candor compels us to say that plaintiff's counsel verbally assured the court below that this power to fix charges had never been exercised by the plaintiff and never would be.

We respectfully submit, however, that the laws of the State of Illinois can not be thus amended; nor can public bodies such as the plaintiff board be thus estopped.

In Fargo v. Michigan, 121 U. S. 230, the Court held that a State tax which levies a tax upon the gross receipts of

railroads for the carriage of freights and passengers into, out of or through the State is a tax upon commerce among the States and therefore void; and that the States cannot be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the States when the business taxed is itself interstate commerce.

Fargo Case, 121 U. S. 230.

Mr. Justice Miller, who wrote the opinion of the Court in Fargo v. Michigan, refers to Gloucester Ferry Co. v. Pennsylvania, says of that case (245): "The argument was very much urged in this Court that the licensing of ferries across navigable rivers, whether dividing States or otherwise, had always been within the control of the States, and that this, being a mere tax upon the business of that corporation, carried on largely within the State of Pennsylvania, was within the power of that State to regulate. But this Court held, after an extensive review of the previous cases, that the business of ferrying across a navigable stream between two States was necessarily commerce among the States and could not be taxed, as was attempted in that case."

The case of Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, was decided without dissent, and the doctrine there declared with respect to interstate commerce has never since been questioned, but, on the contrary, that case has been time after time cited and approved. Indeed, we are embarrassed by the number of decisions of this Court citing and reaffirming the doctrine of Gibbons v. Ogden and the Gloucester Ferry case.

In Norfolk, Etc., R. R. Co. v. Pennsylvania, 136 U. S. 114, it was held that "a railroad which is a link in a through line of road by which passengers and freight are carried into a State from other States and from that State to other

States is engaged in the business of interstate commerce; and a tax imposed by such State upon the corporation owning such road for the privilege of keeping an office in the State, for the use of its officers, stockholders, agents and employes (it being a corporation created by another State) is a tax upon commerce among the States and as such is repugnant to the Constitution of the United States."

Norfolk Ry. Case, 136 U. S. 114.

In the opinion in this case, at page 120, Mr. Justice Lamar says: "The plaintiff in error does not exercise or seek to exercise in Pennsylvania any privilege or franchise not immediately connected with interstate commerce and required for the purposes thereof. * * * A tax upon it was, therefore, a tax upon one of the means or instrumentalities of the company's interstate commerce; and as such was in violation of the commercial clause of the Constitution of the United States."

In Harman v. Chicago, 147 U. S. 396, this Court declared unconstitutional and void an Ordinance of the City of Chicago, imposing a license tax, for the privilege of navigating the Chicago River and its branches, upon steam tugs licensed by the United States authorities. This ordinance is not unlike, in many respects, the ferry laws of the State of Illinois, which are supposed to justify the recovery of an immense penalty in this case. For instance its provides that no person shall use a tug or tow boat on the Chicago River or its branches or slips without first obtaining a license therefor in the manner prescribed by the ordinance. It also directs that all applications for a license shall be made to the Mayor and $25 paid therefor each year, and that any person violating the provisions of the ordinance shall be subject to a fine of not less than $5 nor more than $50 for each offense. But it does not, apparently, allow the Mayor to discrimi-

Harman Case, 147 U. S. 396.

nate against applicants for a license and refuse any one a license though he might be able and willing to comply with every provision of the ordinance. Nor *does it undertake to control* the manner in which the tug owner shall do business after he gets his license, and in these particulars it differs radically from the ferry laws of Illinois now under consideration. At page 406 in the Harman Case, the Court says: "In the present case, neglect or refusal of the owner of tugs to pay the license required by the ordinance subjects him to the imposition of a fine. His only alternative is to pay the fine, or the use of his tugs in their regular business will be stopped. Of course, the ordinance, if constitutional and operative, has the effect to restrain the use of the vessels in the legitimate commerce for which they are expressly licensed by the United States. **It would be a burden and restraint upon that commerce which is authorized by the United States, and over which Congress has control. No State can interfere with it or put obstructions upon it without coming in conflict with the supreme authority of Congress.** The requirement that every steam tug, barge, or tow boat towing vessels or crafts for hire in the Chicago River or its branches, shall have a license from the City of Chicago, is equivalent to declaring that such vessels shall not enjoy the privileges conferred by the United States except upon the conditions imposed by the City. The ordinance is therefore plainly and palpably in conflict with the exclusive power of Congress to regulate commerce, interstate and foreign. The steam tugs are not confined to any one particular locality, but may carry on the trade for which they are licensed in any of the ports and navigable rivers of the United States; they may pass from the river and harbor of Chicago to any port on Lake Michigan, or other lakes and rivers connected therewith. As justly observed by counsel, the citizen of any of the States bordering on the lakes, who, with his tug boat also enrolled and licensed for the coasting trade, may wish to tow his or

his neighbor's vessel, must, according to the ordinance, before he can tow it into the Chicago river or any of its branches, obtain a license from the City of Chicago to do so; the license of the United States will be insufficient to give him access to those waters."

On the authority of this case, the Supreme Court of Missouri in City of St. Louis v. Consolidated Coal Company (158 Mo. 342) held that vessels licensed by the United States for the coasting trade and engaged in transporting freight on the Mississippi River from Illinois to Missouri, and unloading the same into vessels moored at the improved wharf of the City of St. Louis, cannot be compelled to pay the license fee exacted by an ordinance of that city, where such fee was not exacted as compensation for the use of the city wharf, but for the privilege of towing boats or other water crafts into and out of the harbor of the city, or from one place to an another within said harbor, and that such ordinance was void as an interference with interstate commerce.

St. Louis Case, 158 Mo. 342.

It is worthy of remark that the attorney for plaintiff in error in the case at bar, was the counsel for the Consolidated Coal Company, and induced the Supreme Court of Missouri to follow the Supreme Court of the United States in the Chicago case. We feel that it will require all of the well known learning and acumen of the distinguished attorney for the plaintiff in this case to induce this Court to see a difference between the contention of the defendant in the case at bar, and that of his client in the Supreme Court of Missouri.

In Moran v. New Orleans, 112 U. S. 69, it was held that an ordinance of the City of New Orleans, which required a license to be paid by persons owning and running tow

boats to and from the Gulf of Mexico and the City of New Orleans, was a regulation of commerce among the States, and an infringement of the interstate commerce section of the Constitution of the the United States, and for that reason void.

Moran Case, 112 U. S. 69.

The Court (page 74) said: "The license fee in the present case is not a tax upon the boats as property according to any valuation. The very law authorizing its imposition declares that it shall not be construed to be a tax on property. * * * It is a charge explicitly made as a price of the privilege of navigating the Mississippi River between New Orleans and the Gulf in the coastwise trade; is a condition on which the State of Louisiana consents that the boats of plaintiff in error may be employed by him according to the terms of the license granted under the authority of Congress. The sole occupation sought to be subjected to the tax is that of using and enjoining the license of the United States to employ its particular vessels in the coasting trade, and **the State thus seeks to burden with an exaction fixed at its own pleasure the very right to which the plaintiff in error is entitled under, and which he derives from, the Constitution and laws of the United States.** The Louisiana statute declares expressly that if he refuses or neglects to pay the license tax imposed upon him for using his boats in this way, he shall not be permitted to act under or avail himself of the license granted by the United States, but may be enjoined from so doing by judical prosecution. The conflict between the two authorities is direct and express. What the one declared may be done, without a tax, the other declares shall not be done except upon payment of the tax. In such an opposition, the only question is, which is the superior authority; and reduced to that, it furnishes its own answer."

In Brown v. Houston, 114 U. S. 622, this Court, at page 630, says: "The power to regulate commerce among the

several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. If not in all respects exclusive power; if in the absence of Congressional action the States may continue to regulate matters of local interest, only incidentally affecting foreign and interstate commerce, such as pilots, wharves, harbors, roads, bridges, tolls, freights, etc., still according to the rule laid down in Cooley v. Board of Wardens of Philadelphia, 12 How. 299, 319, **the power of Congress is exclusive wherever the matter is national in its character or admits of one uniform system or plan of regulation; and it is certain and so far exclusive, that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of any other State coming or brought within its territory.** All laws and regulations are restrictive of natural freedom to some extent and where no regulation is imposed by the government, which has an exclusive power to regulate, it is an indication of its will that the matter shall be left free. **So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that its commerce shall be free and untrammeled and any regulation of the subject by the States is repugnant to such freedom.** This has frequently been laid down as law in the judgment of this Court. In Welton v. State of Missouri, 91 U. S. 282, Mr. Justice Field, speaking for the Court, said: "The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce, does not affect the question. **Its inaction on this subject when considered with reference to its legislation with respect to foreign commerce is equivalent to a declaration that interstate commerce shall be free and untrammeled.**" This was said in a case where the plaintiff in error had been convicted of selling goods without a license under a law of the State of Missouri, which pro-

Brown Case, 114 U. S. 622.

hibited any person from dealing as a peddler without a license, and which declared that a peddler was one dealing in goods or wares "not the growth, product or manufacture of this State (Missouri), by going from place to place to sell the same."

The Court then quoted a number of cases in support of the doctrine thus announced.

In Hall v. DeCuir, 95 U. S. 485, this Court held to be an interference with interstate commerce, and thereby unconstitutional and void, an act of Louisiana which required those engaged in the transportation of passengers among the States, to give all persons traveling within that State upon vessels employed in that business, equal rights and privileges in all parts of the vessel without distinction on account of race or color. The Court (page 488) said: "We think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration in our opinion occupies that position. It does not act upon business through local instruments to be emloyed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * * **The River Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. Commerce upon these waters is immense, and its regulation clearly a matter of national concern.** * * * Uniformity in the regulations by which he (the carrier) is to be governed from one end to the other of his route is a necessity of his business, and to secure it Congress, which is untrammeled by State laws, has been invested with the exclusive legislative power to determine what said regulations shall be.

Hall Case, 95 U. S. 485.

If this statute can be enforced against those engaged in interstate commerce, it may be as well against those engaged in foreign."

Iowa Case, 170 U. S. 412.

In Rhodes v. Iowa, 170 U. S. 412, Mr. Justice White, at page 424, quotes with approval, and at greater length than we have set forth, the language which we have just cited.

Debs Case, 158 U. S. 564.

In the Debs case, 158 U. S. 564, some of the Acts by which Congress has expressed its will with respect to interstate commerce are referred to. One of these Acts, though Mr. Justice Brewer says he will not attempt to recite those provisions of Congress relating to interstate commerce by water, is an Act of Congress of 1866, which provides: "That every railroad company in the United States whose road is operated by steam, its successors and assigns, be and it is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination."

The declaration in the case at bar shows that while defendant's ferry may not be operated by a railroad it is used solely for the ferriage of cars and therefore in connection with railroads so as to form a continuous line of transportation between railroads in Illinois and Missouri.

Addyston Pipe Case, 175 U. S. 211.

The opinion in Addyston Pipe Steel Company v. United States, 175 U. S. 211, reaffirms the doctrine that commerce between the States includes the transportaton of persons and property and the navigation of public waters, as well as the sale and exchange of commodities; and that the power to regulate such commerce and prescribe the rules by which it shall be governed, is so completely vested in Congress as to exclude all limitations

other than such as are prescribed by the Constitution itself, and that this power of Congress is so fundamental and far reaching that it includes the power to interfere with or prohibit contracts between citizens relating to such commerce. The Court said: "We think the provision regarding the liberty of the citizen is to some extent limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially and not merely, indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree the commerce among the States."

In short, this Court has guarded with jealous care the power of Congress over interstate commerce, realizing as it has more than once said, that the proper conduct of the business of this country is very dependent upon this power. For instance, in County of Mobile v. Kimball, 102 U. S. 691, this Court said that "It is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States, was to insure uniformity of regulation against conflicting and discriminating State legislation," and that that commerce embraces navigation of harbors and bays along our coast and all navigable rivers within the States, and that the subjects upon which Congress can act under this clause of the Constitution, are of infinite variety; the Court further saying: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. To regulate it as thus defined, there can be only one system of rules applicable alike to the whole country, which Congress alone can prescribe."

Kimball Case, 102 U. S. 691.

In Brennan v. Titusville, 153 U. S. 289, it was held that "an ordinance requiring agents soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax therefor, made by a municipal corporation under authority conferred by a statute of the State granting to such corporations power to levy and collect license taxes on hawkers, peddlers and merchants of all kinds, is an exercise, not of the police power, but of the taxing power, and when it is enforced against an agent sent by a manufacturer of goods in another State to solicit orders for the products of his manufactory, it imposes a tax upon interstate commerce, in violation of the provisions of the Constitution of the United States."

Brennan Case, 153 U. S. 289.

In this case, pages 302 and 303, Mr. Justice Brewer says:

"It is undoubtedly true that there are many police regulations which do affect interstate commerce, but which have been and will be sustained as clearly within the power of the State; but we think it must be considered, in view of a long line of decisions, that it is settled that nothing which is a direct burden upon interstate commerce can be imposed by a State without the assent of Congress and that the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free. * * * In Leloup v. Mobile, 127 U. S. 640 (645), are these words from Mr. Justice Bradley: 'Of course the exaction of a license tax as a condition of doing any particular business is a tax on the occupation; and a tax on the occupation of doing a business is surely a tax on the business.'"

Mr. Justice Brewer continues: "It is clear, therefore, that this license tax is not a mere police regulation simply inconveniencing one engaged in interstate commerce, and so only indirectly affecting the business; but it is a direct charge and burden upon that business; and if a State may

lawfully exact it, it may increase the amount of the exaction until all interstate commerce in this mode ceases to be possible. And notwithstanding the fact that the regulation of interstate commerce is committed by the Constitution to the United States, the State is enabled to say that it shall not be carried on in this way and to that extent to regulate it."

But how much more complete and far reaching, absolute indeed, is the authority claimed by the State of Illinois over interstate ferries through its ferry laws now under examination.

In Brennan v. Titusville, a number of decisions of this Court on the right of the States to tax, or regulate in any way, interstate commerce are cited and examined and they all justify Mr. Justice Brewer's declaration in Adams Express Co. v. Ohio, 166 U. S. 185, where on page 218, he said:

"Again, and again has this Court affirmed the proposition that no State can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce."

We trust the Court will not lose sight of the fact that the ferry laws of Illinois declare that the tax, for failing to pay which defendant in error is sought to be bankrupted and driven out of business, is a privilege or license tax, and is expressly declared in the laws themselves "not to be in lieu of taxes upon the property or franchise of such ferry, but such shall be subject to be assessed and taxed as other property and franchises." (Sec. 9.)

Other instances in which this Court has under various conditions sustained the power of Congress over interstate commerce, and held regulations concerning it by the States to be void, are found in the following among many cases:

1. As to the long and short haul by railroads.
   Wabash Ry. Co. v. Ill., 118 U. S. 557.

2. As to tax on receipts by steamship company from insterstate commerce.

Philadelphia, Etc., Co. v. Pa., 122 U. S. 326.

3. As to interstate traffic in liquors, and the significance of the silence of Congress, and the fact that Congress has indicated an intention that interstate commerce, by means of railroads, shall not be interfered with by the States.

Bowman v. The C. & N. W. Ry. Co., 125 U. S. 465.

4. As to the want of power in a State to require a telegraph company transmitting messages between the States to take out a license

Leloup v. Mobile, 127 U. S. 640;
St. Louis v. W. U. Tel. Co., 148 U. S. 92.

5. That franchises conferred by Congress cannot be taxed by the States, and that Congress has power to authorize individuals and corporations to build railroads across States and territories.

California v. Pacific R. R. Co., 127 U. S. 1.

6. A State cannot require the agent of an express company to take out a license.

Crutcher v. Kentucky, 141 U. S. 47.

7. That under a statute of Illinois, requiring railroads to stop their trains at county seats, the Illinois Central could not be required to run its through trains into Cairo.

Illinois Central R. R. Co. v. Illinois, 163 U. S. 142.

8. As to the want of power in a State to tax salesmen or "drummers" from other States.

Robbins v. Shelby County, Etc., 120 U. S. 489.

2. Even if the State of Illinois had power to exact a license fee from all persons engaged in carrying on interstate commerce by means of ferries the discriminations of the Act in question in favor of existing ferries and land owners and the authority given the Boards of County Commissioners to discriminate between applicants for a license makes the Act void so far as it relates to interstate commerce.

We believe that the Act in question is so palpably unconstitutional as a regulation of interstate commerce because of its every provision that we do not propose to elaborate the point now made. We simply mention it in order to call the Court's attention to the entirely unconstitutional character of the Act. In support of this point we appeal to Guy v. Baltimore, 100 U. S. 434, where this Court held that although the City of Baltimore might collect a wharfage tax from ships landing at a certain improved wharf in that city, yet the ordinance imposing such tax was void so far as it discriminated between ships bringing goods from other States and those with produce grown in Maryland.

PLAINTIFF'S AUTHORITIES.

3. We have demonstrated, we believe, through the decisions of this Court, that plaintiff's contention is entirely without foundation so far as it depends upon the statement in Chief Justice Marshall's opinion in Gibbons v. Ogden (9 Wheat. 1), that ferries were left within the control of the States.

But there is a decision of this Court, which rests on a misunderstanding of this passage in Gibbons v. Ogden, on which plaintiff much relies and which we have not so far examined. We refer to Conway v. Taylor's Exrs. (1 Black 603). In this case the appellees held a franchise from Kentucky which gave them the exclusive right of conducting a ferry from Newport in that State across

Conway Case, 1 Black 603.

the Ohio River to Cincinnati in Ohio, and filed a bill in the Circuit Court of Campbell County, Kentucky, to enjoin appellant from invading these ferry rights. The Kentucky courts sustained the contention of appellees and the case was then carried to this Court, which affirmed the decree of the Kentucky Court of Appeals, which enjoined appellee from ferrying persons or property from the Kentucky shore within the territorial limits covered by appellant's franchise, but did not enjoin appellee from ferrying persons and property to Kentucky within said limits (pp. 628, 632). That is, Mr. Justice Swayne, who wrote the opinion, declared that a State can control ferriage from it to another State, but cannot grant exclusive rights to ferry persons and property into it. A distinction is also made between interstate commerce conducted with "the regularity or purposes of ferry trips," and interstate commerce conducted "in the prosecution of the carrying trade and of ordinary commercial navigation" (632).

Of course, there is no foundation for this distinction in the language of the commerce clause of the Constitution, and Mr. Justice Swayne bases it on the sentence in Gibbons v. Ogden which we have heretofore quoted, and by which, as the learned Justice supposed, Chief Justice Marshall meant to exclude interstate ferries from Congressional control. We have shown from an examination of the facts involved in the Gibbons case, and from the opinion of this Court in the Gloucester Ferry case, how unfounded is this view of the Gibbons case. In the Covington Bridge case (154 U. S. 204), which we have already referred to, this Court examined the Conway case, and following the views announced in the Gloucester Ferry case (114 U. S. 196), distinctly declared that interstate ferries were not within the control of the States. Mr. Justice Brown, in the Covington Bridge case, when speaking of State control of interstate ferries, at page 219 says:

"Let us examine some of the cases which are supposed

to countenance the doctrine that ferries and bridges connecting two States are not instruments of commere between such States in such sense as to exempt them from State control. In Conway v. Taylor's Executors, 1 Black, 603, a ferry franchise on the Ohio was held to be grantable under the laws of Kentucky to a citizen of that State, who was a riparian owner on the Kentucky side. It was said not to be necessary to the validity of the grant that the grantee should have the right of landing on the other side, or beyond the jurisdiction of the State. **The opinion, however, did not pass upon the question of the right of one State to regulate the charge for ferriage, nor does it follow that because a State may authorize a ferry or bridge from its own territory to that of another State, it may regulate the charges upon such bridge or ferry.** The State may undoubtedly create corporations for the purpose of building and running steamships to foreign ports, but it would hardly be claimed that an attempt to fix a scale of charges for the transportation of persons or property to and from such foreign ports would not be a regulation of commerce and beyond the constitutional power of the State. It is true the States have assumed the right in a number of instances since the adoption of the Constitution to fix rates or tolls upon interstate ferries and bridges, and perhaps in some instances have been recognized as having authority to do so by the courts of the several States but we are not aware of any case in this Court where such right has been recognized."

It is not out of place to here remark that the Conway case was decided by this Court at a time (1861) when the commercial clause of the Constitution was not as well understood as it is now, and anything then said on that clause which runs counter to the trend of the later decisions of this Court may very properly be re-examined.

The only other case in which this Court has referred to the Conway case, which we have found, is the case of Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, which is

also one of the decisions of this Court on which plaintiff relies.

The Wiggins Company was a creature of the State of Illinois, and had pleaded a charter exemption from taxes imposed on like property of other citizens of the State employed in like manner with that of the Wiggins Co., while in the case at bar defendant is a Missouri corporation, and not a creature of the State of Illinois, and according to the Gloucester Ferry case is not doing business in Illinois. After showing that the charter of the Wiggins Co. did not exempt its boats from such taxation as was imposed on other like property of its citizens the Court said that the next question for decision was whether the State had the power "to impose a license fee either directly or through one of its municipal corporations upon the **keepers of ferries living in the State** for boats owned by them" and used in ferrying passengers across the Mississippi River, the Wiggins Co. contending that the State had no such right because it was a regulation of interstate commerce, and a tonnage duty, and therefore contrary to the Constitution of the United States.

Wiggins Ferry Case, 107 U. S. 365.

The Court (373) said: "The levying of a tax upon vessels or other water craft, or the exaction of a license fee by the State **within which the property subject to the exaction has its situs,** is not a regulation of commerce within the meaning of the Constitution of the United States."

The Court, in concluding its opinion, says (377): "These authorities show that the enrollment and licensing of a vessel under the laws of the United States does not of itself exclude the right of a State to exact a license **from her own citizens** on account of their ownership and use of property having its situs in the State."

The contrast between the Wiggins case, and the case at bar, is greater than that between the former and the Gloucester Ferry Case (114 U. S. 196), because in the latter

case the State of Pennsylvania did not assert a right to exclude the ferry company from the State and stop its business, nor insist that its permission must be obtained before the ferry company could engage in interstate commerce, as plaintiff in the case at bar claims the right to do; and yet, in the Gloucester case, the Court said: "The transportation of passengers and freight for hire by a steam ferry across the Delaware River, from New Jersey to Philadelphia, **by a corporation of New Jersey,** is interstate commerce which is **not subject to exactions by the State of Pennsylvania.**" Is not this entirely decisive of the case at bar?

The truth is, the Wiggins case only decided that the charter of that company did not exempt it from such taxes as might be imposed on other ferry companies of the State, and anything said in that decision that goes further than this has been discredited by this Court itself in the Gloucester case (114 U. S. 196), and also in the Covington bridge case (154 U. S. 204), where the Court said (220): "In the Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, it was held that the State had the power to impose a license fee either directly or through one of its municipal corporations, **upon ferry keepers living in the State,** for boats which they owned and used in conveying from a landing in the State, passengers and goods, across a navigable river to another State. * * * Upon the other hand, however, it was held in Moran v. New Orleans, 112 U. S. 69, that a municipal ordinance of New Orleans imposing a license tax upon persons owning and running tow-boats to and from the Gulf of Mexico was void as a regulation of commerce."

In Moran v. New Orleans, 112 U. S. 69, the Court, at page 74, said: "It is undoubtedly true, as it has often been judicially declared, that vessels engaged in foreign or interstate commerce, and duly enrolled and licensed under the acts of Congress, may **be taxed by State authority as property;** provided the tax be not a tonnage duty, **is levied**

only at the port of registry, and is valued as other property in the State, without unfavorable discrimination on account of its employment (citing amongst other cases, Wiggins v. East St. Louis, 107 U. S. 365). But the license in the present case is **not a tax upon boats as property,** according to any valuation. **The very law authorizing its imposition declares that it shall not be construed to be a tax on property.**" And such is the provision of the Illinois ferry laws, for Sec. 9 thereof, as heretofore pointed out, provides that **the license fee shall not be in lieu of taxes upon the property or franchises of the ferry.**

The Wiggins case was referred to by this Court in Pickard v. Pullman Co., 117 U. S. 34, by Mr. Justice Blatchford (p. 50), in these words:

"In Wiggins Ferry Co. v. East St. Louis, the decision was that the State had power to impose a license fee upon a ferry keeper living in the State, for boats which he owned and used in carrying from the State passengers and goods across a navigable river to another State; and that the levying of a tax on such boats, or the exaction of a license fee in respect of them, by the State in which they had their *situs*, was not a regulation of commerce within the meaning of the Constitution. In the case at bar the plaintiff was not a Tennessee corporation and had no domicile in Tennessee, and the sleeping cars in question, as before said, had not any *situs* in Tennessee for the purposes of taxation." The distinction which the Court thus makes is more applicable to defendant in the case now before the Court than it was to the Pullman Company in the case just quoted from. But plaintiff's counsel in the case at bar insists that such distinction is not well taken. If not, so much the worse for all cases that depend upon the Wiggins case, for it is clear that this Court will overrule the Wiggins case rather than the long line of its decisions on interstate commerce that are irreconcilable with it except through the distinction now referred to.

Pickard Case, 117 U. S. 34.

Both the Wiggins case and the Gloucester Ferry case (114 U. S. 196) are cited in Pullman Car Co. v. Pennsylvania, 141 U. S. 18, in support of this language (p. 23):

Pullman Co., 141 U. S. 18.

"Ships or vessels, indeed, engaged in interstate or foreign commerce upon the high seas, or other waters which are a common highway, and having their home port, at which they are registered under the laws of the United States, or the domicil of their owners in one State at whose ports they incidentally and temporarily touch for the purpose of delivering or receiving passengers or freight. But that is because they are not, in any proper sense, abiding within its limits and have no continuous power or actual *situs* within its jurisdiction, and therefore can be taxed only at their legal *situs* their home port and the domicil of the owners."

In this Pullman Car Co. case the opinion (p. 25) continues: "Much reliance is also placed by plaintiff in error upon the cases in which this Court has decided that **citizens or corporations of one State cannot be taxed by another State for a license or privilege to carry on interstate or foreign commerce within its limits. But in each of those cases the tax was not upon the property employed in the business but upon the right to carry on the business at all and was therefore held to impose a direct burden upon the commerce itself.**"

These words as correctly describe the ferry laws of Illinois as if they were meant to directly apply to them, and raise another barrier to a recovery in the case at bar.

The only other decision of this Court relied on by plaintiff is Fanning v. Gregoire, 16 How. 524 (decided in 1853). This case cannot be considered as deciding anything against the contention of defendant in the case at bar as will appear from a statement of the facts of that case and the decision of the Court. In 1838, the **Legislature** of the **Territory** of **Iowa** authorized Fanning and his heirs and

Fanning Case, 16 How. 524.

assigns to establish and keep a ferry across the Mississippi river at the town of Dubuque, for the term of twenty years, and enacted further that no court or board of county commissioners should authorize any person to keep a ferry within the limits of the town of Dubuque. In 1847, the General Assembly of the State of Iowa passed an Act to incorporate the City of Dubuque and gave the city council power to license and establish ferries across the Mississippi river from said city to the opposite shore. In 1851 the Mayor of Dubuque, acting by authority of the city council, granted a license to Gregoire to keep a ferry for six years from April 1st, 1852. The Court held that the right granted to Fanning was not exclusive of such a license as this and that the prohibition to license another ferry did not extend to the legislature nor to the city council to whom the legislature had delegated the power, and that it was not necessary for the council to act by an ordinance in the case.

Such were the facts in the Fanning case, and so far, and no further, does the decision therein go. Can it be called in any sense a contradiction of, or irreconcilable with, the Gloucester Ferry case and many others relied on by defendant, especially in view of the concluding words of the opinion, in which Mr. Justice McLean (p. 534) says: "The argument that the free navigation of the Mississippi River guaranteed by the ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with police powers in granting ferry licenses. **When navigable rivers within the commercial power of the Union may be obstructed one or both of these powers may be invoked.**"

Do not the ferry laws of Illinois, as applied to defendant in the case at bar, obstruct the navigation of a river within the commercial power of the Union? The best answer to

this question are the laws themselves, to which we respectfully refer the Court.

Plaintiff's declaration contains two counts, in one of which it is alleged that defendant has within the County of St. Clair, and there subject to taxation and used in and about its ferry business, a certain permanent landing place with certain cradles and roadways thereto; and on this count its counsel in the court below based a contention that because defendant possessed and used such property, so subject to taxation by Illinois, that State had the right to require defendant to obtain its consent before using its boats in its interstate ferry business. So far as counsel's brief in this Court shows he is not now insisting on this count in the declaration as the one under which plaintiff is entitled to recover, but he has not abandoned the count, and we therefore feel that we should give the theory on which it is based some slight attention at least, as we will not have an opportunity of answering any argument, either writtten or oral, that he may later make in support of this count in the declaration. Let us subject the theory on which this count is based to the test of both reason and authority.

In the first place this assertion involves a radical constructive amendment of the Constitution of the United States. That instrument gives Congress power "to regulate the commerce with foreign nations and among the several States." But plaintiff's counsel would add: "Provided those engaged in such commerce do not have within the limits of any State property subject to taxation therein and used in such commerce, in which case Congress shall lose all power over such commerce as conducted by such person." These, or their equivalent, are the words counsel for plaintiff would have the Court read into Section 8 of Article I of the Constitution of the United States. Will this Court, or any other, do it? It will not, we venture to say, on the sole authority of Wiggins v. East St. Louis, *supra*.

But what do the authorities say? Nothing! That is, the contention of plaintiff's counsel is so entirely original that we have been unable, after a very laborious examination of the questions involved in this case, to find a single other case in which plaintiff's contention has been advanced. But we have found a great many cases in which counsel might have made the point plaintiff relies on, but they, and this Court as well, seem to have entirely overlooked the doctrine contended for by plaintiff. We venture to say that the point relied on by plaintiff's counsel might have been raised in every interstate commerce case, to which an interstate carrier was a party, that has come before this Court, because we imagine that the carrier in each of these cases had property taxable by the State whose regulations it failed to comply with and which it employed in its interstate commerce.

This can certainly be said of the twenty or more cases cited in this brief in support of our demurrer.

Thus the Gloucester Ferry Co. had a wharf and probably other property in Pennsylvania, and so, we may also presume, had the appellants in Gibbons v. Ogden, for how could they have done a ferry business without a wharf and some chattels?

Harman's tugs were registered in Chicago and his residence was apparently in that city. The same may be said of Moran's tow-boats in New Orleans.

An examination of the facts in the St. Louis Consolidated Coal Co., 113 Mo. 83, discloses that the defendant's boats were taxed in St. Louis, and yet on its second appeal (158 Mo. 342) the Supreme Court of Missouri held, on the strength of Harman v. Chicago, 147 U. S. 396, that the defendant's boats were not required to get a license from the City of St. Louis.

The Wabash R. R. Co. is an Illinois corporation with hundreds of miles of roadways, and other forms of taxable property, within its borders, yet this Court held that

the State of Illinois, long and. short haul law did not control it in its interstate commerce business. The Illinois Central R. R. Co. is also an Illinois corporation with property in that State subject to taxation, and yet this Court has held that that company could not be required by that State to run its through trains into Cairo. And so we might go through every other case cited in this brief and, as we believe, every like case that has been before this Court, and find them on all-fours with the case at bar, so far as the point now under consideration, and greatly relied on in the Court below by plaintiff, is concerned, and we would be compelled to arise from their perusal with the conviction, if we assent to the contention of plaintiff's counsel, that each and every one of these cases was wrongly decided.

It is not necessary to examine the decisions of the State courts cited by plaintiff, since they are not controlling authorities in this Court, and none of them involve the exact question presented by the case at bar; nor does the reasoning in any of them assail the arguments of this Court by which has been established the doctrine of interstate commerce as contended for by the defendant in error.

CONCLUSION.

Why should this Court have held, as Mr. Justice Swayne said in the Conway case it had held in Gibbons v. Ogden? Where would the Court have gotten its authority for such a ruling if it recognized travel by ferry between the States as interstate commerce? Surely there is nothing in the interstate clause of the Constitution on which to base such a doctrine; and how fortunate is it that such is the fact.

Mr. Webster, in his great argument for appellant in Gibbons v. Ogden, said that few things were better known than that the prevailing motive in the adoption of the Con-

stitution was to regulate commerce and to rescue it from the destructive consequences of State legislation, and place it under the protection of uniform law (11); and that the only object stated in the Virginia Resolutions calling for a constitutional convention was the need for such regulation of commerce (12); and he declares that if a State could grant a monopoly to one of its citizens it could to all to the exclusion of those not citizens, and pictures Virginia exercising control over the entrance to Chesapeake Bay and New York with a like authority over the entrance to the Bay of New York (24). At that time a steam vessel going to New York was forfeited to the representatives of Fulton under the exclusive rights asserted by Ogden as Fulton's assignee, while the laws of Connecticut prohibited any vessel operated under the Fulton license from entering her waters, and the laws of New Jersey authorized all damages and treble costs to be collected from any one who in New York under the Fulton license might seize a steamboat from New Jersey (4). Such was the retaliatory legislation of those three States. The boundaries of the State of Illinois are composed of forty counties, of which eighteen lie on the Mississippi River, five on the Ohio, five on the Wabash and three on Lake Michigan, leaving only nine counties—four on its north line and three on the eastern border of the State—through which it can be entered without crossing navigable waters. The Mississippi flows for over five and a-half degrees of latitude along the western border of this State, and must be crossed, somehow, by the commerce of many millions of the most intelligent and industrious people in the world. The bridges that span it in the 400 or 500 miles that lie between the mouth of the Ohio and the north line of Jo Daviess County, can probably be counted on the fingers of one hand, and all traffic over it by other means than these bridges must at present, and much of it for all time, be carried on by interstate ferries, which, if the law of Illi-

nois under consideration is valid, can only exist through the grace of eighteen Boards of County Commissioners. No assurance of the wise and just use of this power is to be found in the thought that the public weal will be of chief consideration with these Boards. The suit at bar is conclusive evidence that other considerations may sway them. This declaration alleges that defendant is conducting a ferry between the shores of St. Clair County, Illinois, and the greatest City on the banks of the Mississippi—the fourth City of the greatest people on the globe—that in four years, it further alleges, the defendant has ferried 80,000 railroad cars. Surely if it has carried so many cars, or half that number, no better evidence that it is meeting a great commercial necessity can be suggested, and yet this Court is asked to give judgment against it for $240,000; ruin it because it has not paid to the County of St. Clair, license fees, which at the utmost could not exceed twelve hundred dollars ($1,200) and might be as low as twenty dollars ($20) for the four years it has been in operation. Not only is Illinois thus hemmed in by navigable waters, which plaintiff contends it controls so far as crossing them by boats is concerned, but many other States are bordered in the same way to the extent, in the aggregate, of many thousands of miles, and a moment's thought brings up the lamentable condition into which our commerce may fall, though no words are adequate to picture it fully, if plaintiff recovers in this case. But the law is not as plaintiff contends and we will not be relegated to a condition as intolerable as the doctrine of nullification would have put us because, as the Supreme Court said in Robbins v. Shelby County, 120 U. S. 489, at page 494, "in the matter of interstate commerce the United States are but one country and are and must be subject to one system of regulations and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further on the subject."

Ex-Judge Jno. F. Dillon, in his address before the New York Bar Association on February 4th, 1901, said, as did Mr. Webster, that the chief reason for substituting the Constitution for the Articles of Confederation was to give Congress exclusive control over foreign and interstate commerce and that this Court by its decision in Gibbons v. Ogden saved the Union.

The great Chief Justice, in this great case, at page 222, of his opinion says that some powerful and ingenious minds, by a course of refined and metaphysical reasoning, would "explain away the Constitution of our country and leave it a magnificent structure, indeed, to look at, but totally unfit for use. They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain and induce doubts where, if the mind were to pursue its own course, none would be perceived. In such a case it is peculiarly necessary to lean to safe and fundamental principles, to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined." In the case at bar, let us, as the Chief Justice advises, lean to fundamental doctrines and avoid obscuring principles that have been thought for seventy-five years at least to be quite plain, lest we may, unfortunately, judicially construe away "the Constitution of our country and leave it a magnificent structure, indeed, to look at, but totally unfit for use." A mere shell and useless will be our Constitution, so far as interstate commerce is concerned, if it is held that Congress loses, and the States gain, control over interstate carriers operating a ferry, or that have property in the States subject to taxation by them, and to this come plaintiff's contention in the case at bar.

We respectfully submit that such is not the law, and that the action of the court below in sustaining the demurrer to the declaration should be affirmed.

JOHN F. LEE,
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APPENDIX.

CHAPTER 55 REVISED STATUTES OF ILLINOIS.*

An Act to revise the law in relation to ferries. In force July 1, 1874:

1. That no person shall establish, keep or use any ferry for the conveyance or passage of persons or property, for profit or hire, unless he shall be licensed as directed by this act, under the penalty of $5 for each day the same is maintained, and $3 for each person and each article of property so conveyed, to be forfeited to the county in which the ferry is situated. This shall not apply to ferries heretofore established by law.

2. Any person may petition the county board for license to keep a ferry, and if such board shall deem such ferry necessary it shall order the county clerk to issue a license to such person upon his paying the fee therefor, to be fixed by the board, and giving bonds as provided by this act: *Provided* that no person shall be licensed to keep a ferry within one mile of any established ferry, so long as such established ferry is comptent to do the business, and its owner complies with the provisions of this act, unless the county board shall deem it necesssary to establish another ferry for the public good.

3. Where the ferry is to be established between two counties, the petition shall be addressed to the county boards of both counties, and the concurrence of both of said boards shall be necessary to the granting of the license, fixing the tolls and prescribing the regulations of the ferry; but a separate license shall be issued by each county, and a license fee paid to each county. And all the provisions of this act shall apply to each of the counties so far as the same may be applicable.

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*The Illinois ferry laws as here presented, and the note which follows them, are copied from the appendix to plaintiff's brief.

4. No license shall be granted to establish a ferry unless the petitioner shall give notice of his intended application by publication in some newspaper published in the county for at least four weeks successively next preceding the session of the county board at which the application shall be made, or, if no newspaper is published in such county, by posting notices in four public places therein, at least four weeks previous to such session. When the application is to several county boards the notice herein provided shall be given in each county.

5. No such license shall be granted to any person other than the owner of the land adjoining to or embracing the water over which the ferry is to be established, unless such owner shall neglect to apply for such license, after notice by the applicant at least four weeks before the sitting of the county board, of his intention to make such application: *Provided*, that when any owner is a non-resident, or cannot be found, such notice shall be given to the party in possession of the land, if the same be occupied; and if no person be in possession no such notice need be given: *And, Provided*, that license may be granted without regard to the ownership of the land, when the ferry has its termini upon a public highway.

6. When several such owners apply, the county board may grant the license to any one or more of them as it shall deem best.

7. Before the delivery of any license the person to whom the same is granted shall give bond, payable to the People of the State of Illinois, with sufficient sureties to be approved by the county clerk, in such sum as the county board shall order, conditioned for the faithful discharge of his duties as ferryman according to law; which bond shall be filed in the office of the county clerk.

8. The term for which a ferry license shall continue shall be fixed by the county board at the time of granting the license, not exceeding ten years, but the same may be

renewed from time to time upon petition, without the notice hereinbefore required, upon giving such bond and paying such license fee as may be required by the county board.

9. The license fee to be fixed by the county board in any case, shall be such sum as the said board shall think proper, not less than $5 nor exceeding $300, but such license fee shall not be in lieu of taxes upon the property, or franchise of such ferry, but the same shall be subject to be assessed and taxed as other property and franchises.

10. The county board shall fix the rate of ferriage at each ferry, and may at any time alter the same, having regard for the breadth and situation of the stream or other water-course, and the publicity of the ferry, and may prescribe regulations for the management of such ferry.

11. Every keeper of a ferry who shall at any time take or demand more than the toll allowed as aforesaid, shall, for each offense, forfeit and pay to the party aggrieved the sum of $3, and such amount as he shall have illegally taken.

12. Ever keeper of a ferry shall keep a list of the legal rates of ferriage, printed, or written in a legible hand, constantly posted up in some public place at the ferry or ferry house, where the same can be easily seen and read by passengers.

13. If any keeper of a ferry fails to comply with the provisions of the preceding section, he shall, for every day such list is not posted up, forfeit not less than $10 to the county.

14. Every keeper of a ferry shall provide proper wharves, causeways or other conveniences and safeguards for the embarking and landing of passengers, teams, horses, cattle and other property in safety, and without unnecessary delay.

15. He shall keep the ferry at all times in good repair, and shall faithfully attend thereto, with such and so many

safe boats, and so many competent men, and proper implements as shall be necessary to operate such ferry for the proper accommodation of the public.

16. If any keeper of a ferry shall fail to perform any of his duties under the two preceding sections, he shall forfeit to the county $10 for each day during the continuance of such failure. If such failure be continued for the space of three weeks, or, if the ferry shall be abandoned, disused or unfrequented for the space of six weeks, the county board may, on complaint, notify the proprietor thereof to show cause why his license should not be revoked, and the county board may, if the cause is proved to their satisfaction, revoke such license.

17. Every keeper of a ferry shall afford safe and speedy passage to all persons and their teams, and property, from daylight in the morning until dark in the evening of each day, unless delay is necessary for repairs, and during such further time as may be required by the county board, and shall at any hour of the night, when required, give passage to any person or property on payment or tender of double the rate of ferriage allowed during the day. No ferryman shall be required to give such passage when it manifestly appears hazardous so to do, by reason of any flood, storm or ice.

18. All persons shall be received into such ferryboats or other vessels, as aforesaid, and conveyed across the water-course over which the same shall be established, according to their arrival or first coming to the said ferry: *Provided*, that all public officers, or such as go on public or urgent occasion, as post riders, couriers, physicians, surgeons and midwives, shall in all cases, be the first carried over, where all can not go at the same time.

19. If a keeper of a ferry shall fail to perform any of his duties under the two preceding sections, he shall, for each offense forfeit to the person aggrieved the sum of

$3, and shall be liable for all damages occasioned thereby.

20. All ferries heretofore established and confirmed over the Ohio, to the proprietors of land on the Western shore of said river, as well as all other ferries which have, at any time, been established over any of the lakes, rivers, creeks or other water-courses within the limits or upon the borders of this State, and where the same has been kept in operation or repair from time to time according to law, and have not at any time since their establishment, been discontinued or abandoned, shall be and they are hereby declared to be established ferries within the meaning of this act, and entitled to the benefits of the same.

21. Whoever, not being licensed to maintain a ferry, or authorized by law so to do, shall run any boat or other craft for the purpose of conveying passengers across any river or other water-course, within three miles of any ferry which now is or hereafter shall be established pursuant to this act, except as hereinafter allowed, shall forfeit such boat or craft to the owners of such ferry, and shall also forfeit to the owner of such ferry $15 for each person who may be thus unlawfully conveyed across such water-course: *Provided*, that nothing herein contained shall be construed to prevent any person from crossing any stream or water-course over which any such ferry shall be established as aforesaid, in his own boat or other craft on his own business or to take in and cross his neighbors where the same is done without fee and not with intention to injure any ferryman near, or to cross any person or property without fee, when the ferry is not in actual operation or in sufficient repair to afford a safe and speedy passage to persons and property.

22. The penalties herein provided for may be recovered in an action of debt before any justice of the peace in the county where the offense is committed.

23. When it shall be necessary for the establishment or use of a ferry, to take or damage any private property, for

a landing, ferry house, or approach to any ferry, proceedings may be had for that purpose under any act that may then be in force for the exercise of the right of eminent domain, subject to all restrictions that may be prescribed by law.

NOTE.

The first legislature which convened after the State of Illinois was admitted into the Union in 1818, passed an act giving county commissioners power to establishn and regulate ferries. —Laws 1819, p. 28.

Amendatory acts were passed February 9, 1821. (Laws of 1821, p. 117) and January 25, 1825. (Laws 1825, p. 63.)

In 1827 the whole subject of ferries, toll brides and turnpike roads was considered in one act and all former legislation expressly repealed. The supervision and control of ferries in the limits, or on the borders of the State was confided to the boards of county commissioners and licenses provided for. —Revised Laws, 1827, p. 220.

On February 12, 1827, a law was passed giving county commissioners in counties bordering on the Ohio River certain power and authority with respect to ferries on the Illinois shore of that stream. —Revised Laws 1827, p. 227.

In the Revision of 1833 the two last named acts are reprinted without change. —Revised Law, 1833, p. 302.

In the Revision of 1845, the provisions of the Revised Statutes of 1827 were re-enacted, and ferries, toll bridges and turnpike roads were treated of in one act.

—Revised Statutes 1845, p. 251.

The Revised Statutes of 1874 divide the provisions respecting ferries, toll bridges and toll roads and place them in three separate chapters, namely: 55, 137 and 138. The chapter above printed, does little more than separate the provisions of prior acts relating to ferries from those relating to toll roads and toll bridges. Some of the sections of the prior acts are re-written, but no very material change was made. Sections 3, 6, 8, 9, and 23 are new.